

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 FULTON PARK UNIT OWNERS'
4 ASSOCIATION, a Nevada non-profit
5 community association individually and in its
6 representative capacity; LEON TURNER, an
7 individual, individually and in his
8 representative capacity; MICHAEL
9 CROWDER, an individual, individually and
10 in his representative capacity; TRICIA
11 CROWDER, an individual, individually and
12 in her representative capacity; RAINA
13 MUSSER, an individual, individually and in
14 her representative capacity; ; and DOE
15 HOMEOWNER/CONDOMINIUM/COMMUN
16 ITY ASSOCIATION 1-10,000, DOE
17 HOMEOWNERS 1-250,000,

11 Plaintiffs,

12 vs.

13 PN II, INC. d/b/a PULTE HOMES OF
14 NEVADA, a Nevada corporation; DR
15 HORTON, INC., a Delaware corporation,
16 ROE INDIVIDUALS, 1-10,000, DOE and
17 ROE BUSINESS or GOVERNMENTAL
18 ENTITIES 10,001-20,000, including Nevada
19 corporations,

17 Defendants.

18 **AND CONSOLIDATED CASES**

CASE NO: 2:11-CV-00783-NDF-MLC

CONSOLIDATED WITH CASE NOs:

2:08-cv-01223-NDF-MLC
2:11-cv-00425-NDL-MLC
2:11-cv-00812-NDL-MLC
2:11-cv-00830-NDL-MLC
2:11-cv-01498-NDL-MLC
2:11-cv-01875-NDL-MLC
2:12-cv-00002-NDL-MLC
2:12-cv-00206-NDL-MLC
2:12-cv-00207-NDL-MLC

Date of Hearing:

Time of Hearing:

20 **MOTION FOR CLARIFICATION OF ORDER GRANTING MOTIONS TO**
21 **DISMISS/STRIKE CLASS ALLEGATIONS, REQUIRING ADDITIONAL BRIEFING**
22 **ON CHAPTER 40 ISSUES AND DENYING OTHER MOTIONS**

22 Defendant, CARINA CORPORATION ("CARINA"), by and through its attorneys, LEE,
23 HERNANDEZ, LANDRUM & GAROFALO, hereby files its Motion for Clarification of Order
24 Granting Motions to Dismiss/Strike Class Allegations, Requiring Additional Briefing on Chapter
25 40 Issues and Denying Other Motions. This Motion is made and based upon the papers and
26 pleadings on file herein, the attached memorandum of points and authorities, and any oral
27 argument that the Court may hear regarding the present subject matter.
28

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

For purposes of this Motion and to avoid restating details with which the Court is well familiar, Carina filed its underlying Motion to Strike Class Action Allegations on July 12, 2014 in response to Plaintiffs' February 24, 2014 Amended Complaint Against Non-Uponor Defendants. Plaintiffs filed their Amended Complaint in accordance with this Court's instruction, though continued to include class-action allegations in the Amended Complaint despite the Court's denial of class certification against the Non-Uponor Defendants.

Carina requested, through its Motion, that Paragraphs 44 and 131 be stricken from Plaintiffs' Amended Complaint, as those paragraphs were expressly contrary to this Court's ruling on the issue. (Fulton Doc. No. 115). The Court granted Carina's Motion, as well as the similar Motions of other Non-Uponor Defendants, however, clarification is now required due to minor ambiguity in the Order's language regarding Paragraph 44 of Plaintiffs' Amended Complaint. Specifically, although the Order grants Carina's Motion to Strike, when it refers to the particular paragraphs being stricken, it includes Paragraph 131, but is silent regarding Paragraph 44. (Fulton Doc. No. 207). As such, Carina respectfully requests that the Court clarify its Order to ensure that Paragraph 44 is indeed stricken.

II. LEGAL ANALYSIS

FRCP 60(a) allows the Court to "correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record." Fed.R.Civ.P. 60(a). The Court may make such clarifications on the motion of a litigating party, "or on its own, with or without notice." *Id.* As such, when the Court determines an order requires correction due to any of the foregoing circumstances, FRCP 60(a) allows to Court to make such corrections.

In this case, it appears that the absence of reference to Paragraph 44 in the specific Order language was a simple omission or oversight, which this Court may correct. In particular, the Court expressly granted Carina's Motion to Strike, however, Paragraph 44 was not specifically referenced thereafter, though the other stricken Paragraphs were.

As the Court will recall from Carina's prior Motion, Paragraph 44 of Plaintiffs' Amended Complaint improperly references a prior Nevada state court class certification against Carina. (Fulton, Doc. No. 109 ¶ 44). It was this very Paragraph, and other similar Paragraphs, that the Court found improper in light of its prior ruling denying class certification against the Non-Uponor Defendants. Because this Court expressly granted Carina's Motion to Strike and determined that the class action allegations in Plaintiffs' Amended Complaint were improper, it appears that the absence of Paragraph 44 in the particular language of the Order was a simple oversight or omission, which the Court may address in accordance with FRCP 60(a).

III. CONCLUSION

To ensure clarity of the record, Carina respectfully requests that this Court clarify its July 21, 2014 Order regarding Paragraph 44 of Plaintiffs' Amended Complaint Against Non-Uponor Defendants. In particular, Carina requests that Paragraph 44 be specifically mentioned in the list of Paragraphs being stricken by the Court's Order.

DATED this 5th day of August, 2014.

**LEE, HERNANDEZ, LANDRUM &
GAROFALO**

By: /s / Jennifer E. Mullen /
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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of August, 2014, Defendant, **MOTION FOR CLARIFICATION OF ORDER GRANTING MOTIONS TO DISMISS/STRIKE CLASS ALLEGATIONS, REQUIRING ADDITIONAL BRIEFING ON CHAPTER 40 ISSUES AND DENYING OTHER MOTIONS** was filed using the United States District Court of Nevada's CM/ECF system, which will serve a notice of electronic filing to all counsel.

/s/ Aaryn Alonzo /

An employee of LEE, HERNANDEZ,
LANDRUM, GAROFALO & BLAKE

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